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Trump orders judges to hurry up; here's what the public rarely sees in Seattle and Tacoma immigration courts

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Detainees, in blue and green uniforms and black Velcro sneakers, wait to appear before an immigration judge at the Northwest Detention Center. The courtroom lies behind locked doors. Photographs are not allowed, and a condition of bringing a sketch artist in was that judges would not be identifiable. (Sketch by Gabriel Campanario / The Seattle Times)

The Trump administration is putting pressure on immigration courts to work faster. Judges, alarmed about the consequences for due process, want independence. The stakes are high, yet this “alternate legal universe” is largely out of public view.

By
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“I can’t give you any more time,” Judge Paul DeFonzo told the Guatemalan immigrant sitting before him.

Time is what the Guatemalan man wanted, to find a lawyer. But he had made that request the last time — almost two years ago. Now here he was, back in federal immigration court, on the 25th floor of a downtown Seattle office building, without a lawyer — again.

“I had some things happen,” explained the Bremerton resident, dressed in a plaid jacket. “My wife just gave birth to my daughter.”

That was his problem. In immigration court, there is no right to counsel.

“I’ll have to swear you in,” DeFonzo said. “Please stand up.”

The judge’s questions followed:

Not a U.S. citizen? Admit or deny.

Admit.

How many times had he come here? Three, over a period of 14 years, the last time crossing illegally into Arizona in 2015.

Did he have children? Two of them were born here, both under 21, so too young to sponsor him for legal residency.

All DeFonzo could do, he said, was offer the man the option of leaving the country on his own.

It was all over in maybe 15 minutes.

Immigration court — where nearly 5,000 cases were decided in Washington alone over the last fiscal year — is an “alternate legal universe,” says Dana Leigh Marks, president emeritus of the National Association of Immigration Judges (NAIJ). The usual rules don’t apply, including any rational timeline. The backlog is so severe that cases sit on a judge’s docket for years awaiting a hearing. Then, they might wrap up as abruptly as a car crash.

The courts are civil, not criminal, but the stakes stark: imprisonment, separation of families, deportation after years or decades of living in the U.S., possible persecution of those sent home.

“I always say that in immigration courts we’re doing death-penalty cases in a traffic-court setting,” said Marks, a San Francisco judge.

The public sees hardly any of it — not least because some courtrooms, like those in the Northwest Detention Center in Tacoma, are literally behind locked doors.

If the courts were more transparent, some might still see deportation as the right outcome for many cases. But questions of due process would undoubtedly remain. Even judges find fundamental flaws in the system. Seeking a voice in the angst-ridden debates prompted by President Donald Trump's crackdown on illegal immigration, they are speaking out about their lack of independence, susceptibility to political influence and what they see as a new threat to due process — pressure from the Trump administration to work faster.

"We're at a crisis point," said Los Angeles Judge Ashley Tabaddor, speaking in her capacity as NAIJ president because otherwise she is, as she puts it, "muzzled."

Like all of the nation's roughly 330 immigration judges, she works for the Department of Justice, which is part of the executive branch, not the judicial. It is a department devoted largely to law enforcement, which syncs with the background of many judges. They often come from Immigration and Customs Enforcement (ICE).

To veteran Seattle immigration attorney Shannon Underwood, it sometimes feels like the judges and the ICE attorneys she faces in court are "on the same team."

All the more striking then, that the judges association argues for immigration courts to be taken out of the DOJ due to an inevitable conflict of interest. A resolution approved in February called for a "complete structural overhaul."

"We're at a crisis point," says Ashley Tabaddor, president of the National Association of Immigration Judges.

The issue erupted even more forcefully this week, after the Justice Department informed judges of a new expectation, which will be built into annual performance reviews as of Oct. 1, that judges complete 700 cases a year and meet other quotas revolving around speed. It is the first time judges will be held to a numerical standard.

Tabaddor on Wednesday joined representatives of the American Immigration Lawyers Association and the Immigration Justice Campaign, which works to provide immigrants with lawyers, for a press call in which they denounced the quotas and pressed for court reforms.

In a March 30 email to judges, James McHenry, director of the Executive Office for Immigration Review, which runs immigration courts, said the new standards will "encourage efficient and effective case management."

U.S. Attorney General Jeff Sessions gave further justification in a December memo. Without providing the exact number, he said the coming performance measure was part of an effort to alleviate the courts' huge backlog, along with hiring more judges (Congress last month allocated money for 100 more) and sending a surge of judges last year to border courts.

Roughly 670,000 cases are pending nationally and 10,000 in Washington's six immigration courtrooms, divided between Seattle and Tacoma.

"The timely and efficient conclusion of cases serves the national interest," Sessions wrote. He allowed that justifiable cases should receive "timely consideration," but referred to baseless and fraudulent ones that he said were clogging up the system.

An accompanying news release, suggesting the quest for speed already was having an effect, trumpeted a 34 percent rise nationwide in deportation and voluntary departure orders for 10 months ending in November, compared to the same period the year before.

"To us, this was absolutely flabbergasting," Tabaddor said in an interview. The administration seemed to be saying it wanted cases decided not just quickly, but a certain way.

Even if the demand revolved just around speed, it was a problem, said the Los Angeles judge. Unlike district and appeals court judges, those in the immigration system can be fired. With quotas hanging over their heads, they would have less time to explain proceedings to unrepresented immigrants, unfamiliar with highly complicated immigration law, some dealing with psychological effects from past trauma.

And immigrants might have fewer opportunities to develop and present their cases, Tabaddor said.

Aside from asylum, there are various other ways an undocumented immigrant might stay in the country, but only if certain things come to light, like being eligible for a visa reserved for crime victims.

Justice Department spokesman Devin O'Malley said the 700-case quota "amounts to just three cases a day."

Tabaddor said Wednesday her association figures it is more like 4 or 5, and that judges would have about two-and-a-half hours to deliberate over sometimes hundreds of pages of documents as well as testimony. The compressed timeline would spark more appeals, making the backlog worse, not better, she argued.

As it is, hearing times are short, getting things right difficult, and court testimony sometimes so wrenching — especially in asylum cases — that a 2007 survey of immigration judges found many suffering from burnout and secondary traumatic stress.

“Quotas will make an already unfair process even more so,” said Immigration Justice Campaign director Karen Lucas.

It will turn the courts into a “deportation machine,” added Jeremy McKinney, secretary of the national lawyers association, who pointed out that ICE under Trump was sending more people to the courts with no criminal background and deep ties to the U.S.

Kelly Vomacka, who spent a decade practicing criminal law, said she was “shocked and horrified” when she started representing immigrants. The reasons were legion, but one was the locks.

Court hearings are generally supposed to be open to the public. But to get to hearings in the Northwest Detention Center, where security is as tight as in prisons, you have to go through three locked doors, Vomacka noted: one into a waiting room, another into a hallway leading to the courtrooms and another into the courtrooms themselves.

Before the final unlocking, she said, “you have to sweet-talk the guard,” showing “you belong there somewhere.”

It was weird. “In Superior Court and Municipal Court, people just hang out,” she said. Nobody hangs out in immigration court.

Vomacka said immigration attorneys may hamper transparency, too, because they are protective of their clients’ privacy. At times, especially during sensitive asylum hearings, they ask judges to close courtrooms. Judges have wide latitude to do so.

The public has no place to look up court records, or even a way to take notes inside Northwest Detention Center courtrooms. Unless you’re a member of the media, one observer was told by a guard in January, you can’t bring in a notebook and pen.

The Seattle Times brought both into court for several days of hearings in Seattle and Tacoma.

“This really is someone who should be out on bond,” a lawyer tells the judge, referring to her client, who has lived in the U.S. since he was 3. The judge wasn’t so sure.

How did you come here?

Judge John Odell had 19 men on his docket one recent Friday morning. Dressed in blue and green uniforms, they filled four rows of benches on one side of a courtroom in the

Northwest Detention Center. The other side was mostly empty, except for an occasional lawyer or relative ushered in by a guard when a particular case was up.

Shortly after 8:30 a.m., Odell explained to the group how things would proceed. If he found them deportable, he said, using a Spanish interpreter, he would consider ways they might nevertheless be able to stay in the country.

In other courts, judges rely on lawyers to present evidence. But in immigration court, “judges are really left holding the bag,” said Jill Family, a professor specializing in immigration law at Widener University in Pennsylvania.

Most often, they find no reprieve warranted. Sixty-seven percent of immigration-court cases nationwide resulted in deportation or voluntary removal orders over the first five months of the 2018 fiscal year, according to a Syracuse University database. For cases in detention-center courts, the figure is higher — 79 percent for courtrooms inside the Northwest Detention Center.

The rigidity of immigration law often leaves little room for any other decision, Family said. Take one way out of deportation, called “cancellation of removal.” To get it, you must not only have children or other relatives with legal status in the U.S., but show that your deportation would cause them “exceptional and extremely unusual hardship.” The law is very clear, Family said, that mere separation is not enough.

In this world, the outcome for a man who came to the U.S. from Mexico when he was 4, was almost a foregone conclusion.

He seemed to think so, answering Odell’s questions perfunctorily and in a monotone.

How did he come here?

“I can’t remember,” said the man, now in his 20s, with glasses and a beard. He spoke in English, the interpreter sitting idle.

“But you believe you entered without permission?” Odell asked.

“Yes.”

“Then I sustain the charges.”

Neither the judge nor the man said whether he had ever sought permission to stay in the U.S. through the DACA program for Dreamers brought here as children.

Was he afraid to go back to Mexico? Odell asked. The man had once had an attorney who said so.

“We never really talked about that,” he said. He was not afraid.

“So, look, you have a long time in the United States,” Odell said. “But you don’t have any qualifying relatives.” No one could sponsor him. He was not eligible for cancellation of removal.

Nor would he be allowed to leave on his own, the judge decided after ICE attorney William Hollerich weighed in, pointing to the man’s previous convictions for drunken driving and driving without a license.

Odell gave the man one choice: whether or not to reserve his right to appeal. Immigrants can take their cases to an appeals board run by the Justice Department, and if they lose, the U.S. Court of Appeals.

“I’ll accept it,” the man said.

“Then it’s a final order of removal,” Odell told the man about to be flown, in handcuffs, to a country he left before kindergarten. “Good luck to you sir.”

The judge turns to a government lawyer for background on detainees’ history in the U.S., including any past crimes. Many undocumented immigrants are unrepresented.

“You are now the lawyer”

For a man who came here as a 3-year-old from Mexico, the question this morning was whether he would continue to be held at the detention center, or be released on bond. If he could get out, his case would be decided in Seattle, and likely take far longer. While he waited, he would effectively be free to live here.

Detention cases are expedited.

“This really is someone who should be out on bond,” said his lawyer.

She noted that her 22-year-old client, who lives in Ellensburg, has three brothers who are U.S. citizens, a fiancée who is a citizen and a child born here.

He was a onetime DACA recipient, but the government declined to renew his permit after a drunken-driving conviction.

He wanted to become a teacher, but his undocumented status made him unable to get the financial help he needed for college, the lawyer said. Instead, he took a training program to become a barber.

Odell wasn't convinced. In 2016, officers found methamphetamine in the trunk of a car the man was driving.

"It's his burden to show he's not a danger or flight risk," the judge said.

In criminal court, the burden of proof is on the government — to show someone should be kept in jail, to establish guilt. It usually works the other way in immigration court.

The man said he had just bought the car and the drugs belonged to its previous owner. Odell wanted the police report, and postponed the bond decision until he got it.

"I just don't like having to make a decision without complete information," the judge said.

That can be a tall order in immigration court. Potential witnesses may be in other countries. Expensive fact-finding missions aren't usually an option for either the government or the immigrant facing deportation. Evidence can be presented, but not according to any formal rules.

"Hearsay is what immigration court runs on," said Underwood, the attorney.

What's more, without a lawyer, immigrants may simply not understand what they're being asked.

"Where was your wife born?" Judge DeFonzo, in his Seattle courtroom last month, asked another man who became his own attorney on the spot.

She was outside in the car, waiting for him, said the resident of Quincy, who had admitted entering the country illegally from Mexico around 10 years ago. An interpreter was there, but the man still got confused.

"You need to pay attention," DeFonzo chided. "You are now the lawyer in this case."

Answering a slightly different question, the man said his wife had either a green card or a work permit.

Which? The judge was getting exasperated.

"Why don't you get her," DeFonzo said. It was not a question.

In a few minutes, the man came back with a woman wearing a pink scarf over her head. The judge started asking her questions.

What was her status? (She had a work permit, given because she had applied for a visa eligible to domestic-violence victims.) Who is your lawyer? (She couldn't remember, but said she had a paper from the attorney in her purse. The judge told her to get it out.) Was her abuser the man by her side? (No, and the man next to her wasn't legally her husband, either.)

"Sir, she's not your wife," the judge said. "Did you know that?"

And with that, the case was essentially over. Within minutes came another voluntary departure order, another wish of good luck.

Would he really leave, and if so for good? He had already voluntarily departed once, and sneaked back in.

But the judge now shifted his attention to his next case. There were so many to go.

In a neighboring courtroom, Judge John Walsh consulted his calendar to find an available date for a hearing. The administration's efforts to speed things up include a directive to wrap up most cases within a year. It wasn't going to happen this time.

"What does January 28, 2021, sound like?" he asked.

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